

On March 23, 1945, the Government having filed a motion in the Western District of Michigan for the return of the action to the Western District of Missouri, the court, after considering the pleadings and arguments of counsel, granted the Government's motion with the following memorandum opinion:

FRED M. RAYMOND, *District Judge*: "Application of the principles of statutory construction discussed by Judge McAllister in the case of *Commissioner of Internal Revenue v. Strong Mfg. Co.*, 6 Cir., 124 F. (2d) 360, 364, results in the conclusion that the words "district of reasonable proximity to the claimant's principal place of business" as used in Section 334 (a) of Title 21 U. S. C., providing for removal for trial to another district of a libel for condemnation proceedings under the Federal Food, Drug and Cosmetic Act, do not include authority to remove to the district within which claimant's principal place of business is located. (See *U. S. vs. Six Dozen Bottles, etc.*, 55 F. Supp. 458; *U. S. v. 168 Dozen, etc. Bromo Seltzer*, (unreported) decided May 25, 1939, by Judge Clancy, S. District of New York; *U. S. v. 74 Cases, etc.*, 55 F. Supp. 745.)

"An order will accordingly be entered remanding said cause to the United States District Court for the Western District of Missouri, Western Division."

On September 17, 1945, the claimant having failed to appear, judgment was entered finding the product misbranded and ordering that it be destroyed.

1782. Misbranding of Mafoliata products. U. S. v. 7 Bottles of Ma-Ta Tablets, 20 Cartons of Ma-Fol Suppositories, 22 Bottles of Liquid Ma-Ta, 22 Cartons of Ma-Ta Vegetable Compound, and a quantity of printed matter. Default decree of condemnation and destruction. (F. D. C. No. 16384. Sample Nos. 23848-H to 23851-H, incl.)

LIBEL FILED: July 5, 1945, Northern District of Texas.

ALLEGED SHIPMENT: By the Mafoliata Corporation, from Chicago, Ill. The products were shipped between the approximate dates of March 15 and May 9, 1945, and the printed matter was shipped on or about May 9, 1945.

PRODUCT: 7 100-tablet bottles of *Ma-Ta Tablets*, 20 cartons of *Ma-Fol Suppositories*, 22 1-quart bottles of *Liquid Ma-Ta*, 22 cartons of *Ma-Ta Vegetable Compound*, a number of accompanying leaflets entitled "*Ma-Ta Mafoliata*," and a number of accompanying testimonial letters, at Abilene, Tex.

Examination showed that the *Ma-Ta Tablets* consisted essentially of an extract of plant material containing the alkaloid berberine coated with calcium carbonate and iron oxide; that the *Ma-Fol Suppositories* consisted essentially of an extract of plant material containing the alkaloid berberine incorporated into a greasy base; that the *Liquid Ma-Ta* consisted essentially of an extract of plant material containing the alkaloid berberine, water, and a small proportion of sodium benzoate; and that the *Ma-Ta Vegetable Compound* consisted essentially of an extract of plant material containing the alkaloid berberine.

LABEL, IN PART: "Tablets Ma-Ta (Mafoliata)," "Ma-Fol Suppositories," "Liquid Ma-Ta (Mafoliata)," or "Ma-Ta (Mafoliata) Vegetable Compound."

NATURE OF CHARGE: *Ma-Ta Tablets* and *Ma-Ta Vegetable Compound*. Misbranding, Section 502 (a), certain statements in the testimonial letters were false and misleading since they represented and suggested that the articles would be effective in the treatment of the conditions, symptoms, and diseases stated and implied, whereas they would not be effective for such purpose. The conditions, symptoms, and diseases referred to were urinary difficulties, including those due to disorder of the prostate gland, pulmonary tuberculosis, carbuncle of the kidney, pain and soreness in the back, weakness, sleeplessness, lack of appetite, rheumatism, arthritis, and syphilis.

Ma-Fol Suppositories. Misbranding, Section 502 (a), the following label statements were false and misleading since the article would not be effective to accomplish the results stated and implied: "Stop Pain Stop Bleeding Heal and Absorb An Ideal Suppository that usually clears up bleeding and painful hemorrhoids in a few days time"; and, Section 502 (e), the label failed to bear the common or usual name of each active ingredient.

Liquid Ma-Ta. Misbranding, Section 502 (a), certain statements appearing in the leaflets and in the testimonial letters were false and misleading since they represented and suggested that the article would be efficacious in the treatment of the conditions mentioned, whereas it would not be efficacious for such purpose. Among the conditions mentioned were the following: Acne, acute septicemia, arthritis, asthma, athlete's foot, abscess in the ear drum, Gerger's or Renault's disease, blood clots, bronchial troubles, burns, cancer, carbuncles, cartilaginous tumor, common colds, constipation, cuts, lacerations,

and bruises, all dermatitis cases, diabetes, duodenal ulcers, earache, eczema, epilepsy, fractures, fungi, gallstones, kidney trouble, bladder trouble, gangrene, gas bacilli, goiter, gonorrhea, halitosis, hay fever, hemorrhoids, piles, and fistulas, high blood pressure, low blood pressure, impetigo, indigestion, infantile paralysis, iritis, jungle rot, ulcers, osteomyelitis, poison ivy, pyorrhea, red bug or chigger bites, ringworm, dandruff, shingles, sinus, sore eyes, sprains, stomach ulcers, stroke of paralysis, sunburn, swollen glands, syphilis, thrombosis, tired feet, tonsillitis, trench feet, trench mouth, tuberculosis, ulcers and boils, vaginal tumors, varicose veins, warts, Vincent's disease, prostate trouble, infection of the teeth, sinus trouble, psoriasis, brain tumor, sciatica, nervous disorders, rheumatism, pain and soreness in the back, weakness, sleeplessness, lack of appetite, boils, swellings, bumps, pyelonephritis, cystitis, wound infections, growths, abscesses, carcinomas, bedsores, anemic conditions, pyonephritis, chancre, and colitis.

DISPOSITION: October 1, 1945. No claimant having appeared, judgment of condemnation was entered and the products were ordered destroyed.

1783. Misbranding of Devonshire's Earth Salts. U. S. v. 48 Packages of Devonshire's Earth Salts, and 1,000 circulars. Default decree of condemnation. (F. D. C. No. 18368. Sample No. 31226-H.)

LABEL FILED: June 14, 1945, Eastern District of Wisconsin.

ALLEGED SHIPMENT: On or about May 25, 1945, by F. S. Powers and Co., from Los Angeles, Calif.

PRODUCT: 48 1-pound packages of *Devonshire's Earth Salts* and 1,000 circulars entitled "Devonshire's Earth Salts Mineral Elements," at Milwaukee, Wis. Examination showed that this product consisted essentially of carbonates, sulfates, chlorides, and phosphates of calcium, sodium, iron, and magnesium, and a small proportion of sulfur.

NATURE OF CHARGE: Misbranding, Section 502 (a), certain statements in the circulars were false and misleading since they represented and suggested that the article would be effective in the treatment of rheumatism, anemia, colds, sinus trouble, appendicitis, diabetes, skin disease, underweight, constipation, a general run-down condition, eczema, mineral deficiency diseases, colitis, stomach trouble, headache, skin disorders, bladder trouble, palpitation of the heart, leakage of the heart, Bright's disease, high blood pressure, poor eyesight, kidney trouble, dizzy spells, swollen legs, boils, periodic pains, ulcers of the stomach, and piles. The article would not be effective for the purposes claimed.

DISPOSITION: September 12, 1945. No claimant having appeared, judgment of condemnation was entered, and the product and circulars were destroyed.

1784. Misbranding of sea kelp. U. S. v. 16 Bottles of Sea Kelp, and 1,300 Circulars. Default decree of condemnation and destruction. (F. D. C. No. 16295. Sample No. 4461-H.)

LABEL FILED: May 25, 1945, Eastern District of Pennsylvania.

ALLEGED SHIPMENT: On or about April 11, 1945, from Zeeland, Mich., by the Kelp Co.

PRODUCT: 8 500-tablet bottles and 8 200-tablet bottles of *sea kelp* and 1,300 circulars entitled "Food Minerals From the Sea," at Paoli, Pa. Examination showed that the product was a compressed tablet of dried sea kelp containing approximately 1.709 grains of mineral matter per tablet, consisting chiefly of the chlorides and carbonates of potassium and sodium.

LABEL, IN PART: "Pure Sea Kelp Dehydrated Macrocystis Pyrifera 5 Grain Tablets."

NATURE OF CHARGE: Misbranding, Section 502 (a), certain statements on the label and in the circulars were false and misleading since they represented and suggested that the article would supply nutritionally significant amounts of copper, calcium, phosphorus, sulfur, sodium, potassium, and magnesium; that it would provide essential minerals that are inadequately supplied by common foods; that ordinary foods are not a reliable source of minerals; that the article would be effective to promote health; that it would be effective to improve appetite, digestive ability, and bowel function; that it would improve the condition of the skin and hair; that it would cause decreased nervous irritability, increased mental alertness, immunity from illness, and an increase in energy reserves; that it would be effective to prevent and correct stomach trouble, rickets, eczema, arthritis, subnormal growth, mental ex-